

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESale PRICE
LITIGATION

)
) MDL NO. 1456
) Civil Action No. 01-12257-PBS
) Subcategory No. 03-10643

THIS DOCUMENT RELATES TO:

The City of New York, et al.

v.

Abbott Laboratories, Inc., et al.

)
) Judge Patti B. Saris
)
)
)
)

**APRIL 2010 STATUS REPORT ON BEHALF OF
THE CITY OF NEW YORK AND NEW YORK COUNTIES**

The undersigned counsel for the City of New York and New York Counties in the above-captioned action (hereinafter referred to as “plaintiffs”) hereby submit the attached Status Report for April 2010, in accordance with the Court’s June 17, 2004 Procedural Order.

Dated: April 1, 2010

Respectfully submitted,

**City of New York and New York Counties in
MDL 1456 except Nassau and Orange, by**

KIRBY McINERNEY, LLP
825 Third Avenue
New York, New York 10022
(212) 371-6600

By: /s/ Joanne M. Cicala

Joanne M. Cicala
Kathryn B. Allen

Ross B. Brooks, Esq.
MILBERG LLP
One Pennsylvania Plaza
New York, NY 10119
(212) 594-5300
Special Counsel for the County of Nassau

Theresa A. Vitello, Esq.
LEVY PHILLIPS &
KONIGSBERG, LLP
800 Third Avenue
New York, NY 10022
(212) 605-6205
Counsel for the County of Orange

**April 2010 Status Report on Behalf of the
City of New York and New York Counties**

FUL Summary Judgment Briefing

On January 27, 2010, the Court entered an order granting plaintiffs' motion for partial summary judgment on FUL issues and denying defendants' joint motion for summary judgment on plaintiffs' "FUL Fraud" claims. *See* Docket No. 6863; Sub-docket 198.

On February 9, 2010, the Court amended its January 27, 2010 order on the FUL issues to reflect plaintiffs' settlement agreement with defendant Boehringer Ingelheim Roxane. *See* Docket No. 6905, Sub-Docket 202.

On February 12, 2010, defendants filed their amended Motion to Amend the Court's Amended February 9, 2010 Memorandum and Order on the FUL issues to Include a Certification for Immediate Appeal. *See* Docket No. 6911, Sub-Docket 204; Docket No. 6912, Sub-Docket 205.

On February 22, 2010, plaintiffs filed their Memorandum in Opposition to defendants' Motion to Amend the Court's February 9, 2010 Memorandum and Order on the FUL issues. *See* Docket No. 6923, Sub-Docket 208. This motion remains *sub-judice*.

Discovery

1. Motion to Compel Discovery from Defendant Merck

On September 4, 2009, plaintiffs filed their Motion to Compel Discovery from Defendant Merck for all at-issue drugs with annual AMP/AWP spreads over 30 percent. *See* Docket. No. 6487; Sub-docket. No. 158.

On October 5, 2009, Merck filed its opposition to plaintiffs' motion to compel. *See* Docket No. 6572, Sub-docket No. 168.

On October 23, 2009, plaintiffs filed their Motion for Leave to File Reply Memorandum

in Further Support of Plaintiffs' Motion to Compel Discovery from Defendant Merck & Co., Inc., and Exhibits to the Declaration of Joanne M. Cicala in Support Thereof Under Seal. *See* Docket No. 6609, Sub-docket No. 175. This motion remains *sub-judice*.

2. Schering's Motion for a Protective Order

On March 5, 2010, Defendant Schering filed a Motion and Memorandum in Support for a Protective Order in order to quash a Notice of Depositions served by plaintiffs on March 1, 2010. *See* Docket No. 6964, Sub-docket 213; Docket No. 6965, Sub-docket 214.

On March 26, 2010 plaintiffs filed their opposition to Defendant Schering's Motion for Protective Order. *See* Docket No. 7009, Sub-docket No. 217.

3. Defendants' Motion to Compel the production of privileged documents withheld by New York State Department of Health ("NY DOH")

On December 23, 2009, defendants filed a motion to compel production of all documents which NY DOH has withheld on the basis of the deliberative process privilege. *See* Docket No. 6810, Sub-docket No. 191. On January 20, 2010, the office of the New York Attorney General filed its Opposition to Defendants' Joint Motion to Compel the Production of Documents from NY DOH. *See* Docket No. 6852; Sub-docket 197. This motion remains *sub-judice*.

Stipulations Regarding the New York EPIC Program's Receipt of AMP Data

Plaintiffs and certain defendants¹ stipulated that those defendants sent AMPs to the New York EPIC Program for certain time periods and for certain NDCs identified in the Revised Exhibit B to Plaintiffs' First Amended Consolidated Complaint [Docket No. 4754]. *See* Docket No. 7017; Docket No. 7023; Docket No. 7018; Docket No. 7020, Sub-docket No. 7018; Docket No. 7002, Sub-docket No. 215; Docket No. 7011, Sub-docket No. 218; Docket No. 7027; Docket

¹ Agouron Pharmaceuticals, Inc., AstraZeneca LP, Hoffman La-Roche Inc., Merck Sharp & Dohme Corp., Mylan Pharmaceuticals, Inc., Sandoz, Inc., Schering Corporation, Par Pharmaceuticals, Inc., Tap Pharmaceuticals, and Wyeth.

No. 6951, Sub-docket No. 212; Docket No. 7025; Sub-docket No. 220.

Voluntary Dismissal of Claims

On March 30, 2010, plaintiffs served a notice of voluntary dismissal of claims against defendant Amgen Inc. and Immunex Corporation. *See* Docket No. 7022.

CERTIFICATE OF SERVICE

I, Kathryn Allen, hereby certify that on the 1st day of April, 2010, I caused a true and correct copy of the above April 2010 Status Report for the City of New York and New York Counties to be delivered to counsel of record for defendants by electronic service pursuant to Case Management Order No. 2 entered by the Honorable Patti B. Saris in MDL No. 1456.

Dated: April 1, 2010

/s/ Kathryn B. Allen
Kathryn B. Allen
Kirby McInerney LLP
825 Third Avenue
New York, NY 10022
(212) 371-6600